IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.799 OF 1997

Dharmaraj Tatyaba Angarkhe)
aged 46 years, resident of)
131/1, Panmala Zopadpatti,)
Pune.) ..Appellant.

V/s

The State of Maharashtra) ..Respondent.

Shri S.S. Hardikar, advocate for the appellant.

Mr. B.H. Mehta, APP for the State.

CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATE : 13th July, 2005

ORAL JUDGMENT: (Per R.C. Chavan, J.)

1. This appeal by Dharmaraj Tatyaba Angarkhe takes exception to his conviction for offence of murder punishable under section 302 of the Indian Penal Code and resultant sentence of imprisonment for life and a fine of Rs 1000/- imposed upon him by the learned Additional Sessions Judge, Pune in Sessions Case No.466 of 1996 before him.

2. A mother of four children, Moharabai, who used to support her family by gathering waste paper was done to death by the appellant - her husband, because of his addiction to liquor. On 10/10/1996, the accused, who was employed in factory, was enjoying a holiday at

his home. His wife Moharabai also did not go to collect waste paper. The accused quarrelled with her, asked her as to why she had not gone to collect waste paper, and at about 8.00 p.m. or 9.00 p.m, he asked Moharabai to go to the house of her mother, who was residing in the same area. On her refusal to do so, the accused poured kerosene over her person and set her on fire. Moharabai raised cries and extinguished fire by pouring water on herself. Children awoke and persons nearby reached on hearing cries. Victim's mother also came there. Victim was taken to K.E.M. Hospital at Pune.

3. Police were informed and caused dying declaration to be recorded by the Special Judicial Magistrate. An offence was registered. In course of investigation, police arrested the accused and seized his underwear, which was the only garment which he was wearing at the time of incident. They also seized other incriminating articles, recorded statements of witnesses and on completion of investigation, sent the charge-sheet to the learned Judicial Magistrate, First Class, Pune who committed the case to the Court of Sessions at Pune.

4. Charge of offence punishable under section 302 of the Indian Penal Code was framed against the accused by the Additional Sessions Judge, Pune to whom the case was made over. The accused pleaded not guilty to the said charge and hence was put on trial.

5. In course of trial, prosecution examined as many as 9 witnesses. The defence raised by the accused in his statement under section 313 Cr.P.C. is that of denial. Upon consideration of the prosecution case, in light of defence raised and arguments advanced, the learned Additional Sessions Judge came to hold the accused guilty of offence punishable under section 302 of the Indian Penal Code and sentenced him to imprisonment for life and fine of Rs 1000/- and in default further R.I. for three months. Aggrieved thereby, the accused has appealed.

6. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State. Since the incident occurred in the house of accused, there are, obviously, no eye witnesses to the incident. P.W. 5 - Pinki, daughter of the victim and accused was supposed to have witnessed the quarrel between her parents just before she left for her grand-mother’s place to go to bed.

It is not unnatural that she did not support the prosecution case in respect of this quarrel, though, she did state that in the past her father had beaten her mother and demanded money for consuming liquor, leading to her mother's going to her grand-mother's place.

7. There is no dispute that the victim died of 89% of burn injuries as observed by Dr. Patil - P.W. 4. Notes of post-mortem examination are at Exhibit-17. The question is who caused these burn injuries to be inflicted on the victim?

8. According to the prosecution case, the victim was taken to the K.E.M. Hospital, Pune by her mother. She seems to have been admitted in the hospital by Dr. Selukar who was examined as P.W. 3. Dr. Selukar - P.W. 3 stated that the patient came at about 11.00 and was admitted at 1.40 p.m. The entries, after admission, were made by doctor in her own handwriting and she stated that the history was narrated by the patient herself and patient told her that the patient's husband poured kerosene on patient's person and set the patient on fire. Dr. Selukar - P.W. 3 produced original case-paper which was marked as Exhibit-15.

9. The learned Counsel appearing for the appellant submitted that P.W. 3 - Dr. Selukar had, in fact, no occasion to treat the patient. It was possibly one Dr. Badwe, who was not examined, had treated the patient. It is true that in cross-examination, P.W. 3 - Dr. Selukar had stated that Dr. Badwe might be C.M.O. on duty on the incidental night and might have informed the police about burns. It may be seen from evidence of P.W. 6 - Head Constable T.S. Ranvare that the information was received that one Moharabai was admitted in K.E.M. Hospital of burn injuries. This witness admitted in cross-examination that he was informed by P.S.O. of Swargate Police Station that Dr. Badwe from K.E.M. Hospital had informed the Police Station about the incident.

10. P.W. 6 - Head Constable Ranvare also admitted in his cross-examination that the information received by Swargate Police Station was to the effect that on 10/10/1996, at about 9.30 p.m. Moharabai had poured kerosene on her person and set herself on fire. The learned Counsel for the appellant submitted that this is the first information which was conveyed to any authority and about which a record was made. He, therefore, submitted that, initially, story was only

of attempt by Moharabai to commit suicide. He also drew our attention to cross-examination of the victim's father Rama - P.W.1. This witness in para 5 of his cross-examination, stated that they did not make complaint against the accused till 2.00 a.m. He was, however, non-commital about the cause of keeping quiet till 2.00 a.m. A suggestion which was put to this witness (P.W.1 - Rama) that they kept quiet till 2.00 a.m. because his daughter would have been otherwise prosecuted for suicide, was not accepted by him. The contention of the learned Counsel for appellant that the case was, in fact, one of suicide and that it turned into one of accusations against the accused only after 2.00 a.m, has to be rejected, because P.W. 3 - Dr. Selukar has stated that by 1.40 a.m., she was told by the patient that the accused had set her on fire and she had made record of such statement. Therefore, there is no question of parents of the victim changing their track after 2.00 a.m.

11. P.W. 6 - Head Constable Tukaram Ranvare stated that on learning of the incident, he carried a letter to Special Judicial Magistrate Sasne by going to the house of the Magistrate and handed over letter to him, copy whereof is at Exhibit-20. He took Special Judicial Magistrate to the hospital and asked the

doctor on duty whether the patient was fit to make statement. On the doctor's certifying that the patient was conscious and in a condition to give statement, in his presence, the Magistrate recorded the statement of the victim. He stated that he too recorded the statement of the victim, before the Magistrate had recorded the statement. The statement recorded by this witness (P.W.6 - Ranvare) is at Exhibit-21 and one recorded by the Special Judicial Magistrate Shri Sasne, who was examined as P.W. 7 is at Exhibit-24. In both these statements, victim is consistent that the accused poured kerosene on her person and set her on fire. P.W. 7 - Special Judicial Magistrate Shri Sasne also states that he took doctor to the patient, asked the doctor to examine the patient and to state whether the patient was fit to make statement. The doctor accordingly examined the patient and certified the patient to be fit. Then he states to have put preliminary questions for his own satisfaction and proceeded to record the statement.

12. The learned counsel for the appellant made a feeble attempt to submit that the dying declaration recorded by P.W. 7 - Special Judicial Magistrate Sasne was unreliable because relatives were present

when the dying declaration was recorded. P.W. 1 - Rama had undoubtedly stated in his cross-examination that, in his presence, P.S.I. came and took statement of his daughter Moharabai. He also stated that another Saheb also recorded statement of his daughter. He stated that during the whole night his wife, his other daughter & her husband were with the victim. But it does not follow from these isolated statements that the relatives were present at the time of recording of dying declaration. P.W. 1 - Rama himself in the same para 4 of his cross-examination has stated that he did not know whether at the time of recording of dying declaration by another Saheb, P.S.I. was present or not because he had himself gone downstairs. P.W. 7 - Special Judicial Magistrate Sasne has stated in para 4 of his cross-examination that no relatives of patient were in room. There is no reason to disbelieve this disinterested word of the Special Judicial Magistrate.

13. Dr. Patil who had examined the patient at the time of recording of this dying declaration deposed as P.W. 9. He stated that at the request of the Special Judicial Magistrate, he examined the patient and found that the patient was conscious, oriented and responding to the commands. He admitted having made

requisite endorsement on the dying declaration - Exhibit-25. His cross-examination too, does not disclose any infirmity to warrant any suspicion about recording of dying declaration.

14. In this case, the question of tutoring by parents is unlikely to arise because victim's father P.W. 1 - Rama stated that on learning of the incident, he searched for his daughter at hospital at Sarasbaug first, then at Sasoon hospital and ultimately he came to K.E.M. Hospital, Pune. Thus, by the time he reached, patient's history was known atleast to P.W. 3 - Dr.Selukar. The contention of the learned counsel for the appellant about admission of the victim after her father reached and after sum of Rs 1500/- was brought from the cupboard in victim's house is incorrect. That admission refers to admission in a special room in the hospital.

15. The dying declaration recorded by P.W. 7 - Special Judicial Magistrate Sasne, statement recorded by Police Head Constable - P.W. 6 Ranvare and the history taken down by P.W. 3 - Dr Selukar, all consistently point to the complicity of the accused in the incident. There is no reason why mother of four kids will falsely name her husband as the perpetrator

of ghastly act of setting her on fire if it were not true.

16. The findings are fortified from the evidence of P.W. 2 - Dada Bhalerao - a panch, in whose presence, underwear of the accused was seized vide panchnama Exhibit-13. P.W. 8 - Investigating Officer P.S.I. Mohite stated that he sent the property to Forensic Science Laboratory by his letter Exhibit-27. The report of the Laboratory in respect of this underwear is at Exhibit-33. It shows that kerosene residues were found on underwear. It is not conceivable that kerosene residues would be found on an underwear of the accused in the process of extinguishing the fire. Kerosene would be found only if the under wear was on the person of the accused when he was sprinkling kerosene. If he was away from the victim when the victim had caught fire and went only to extinguish the fire, where is the question of his underwear getting stained with the kerosene? Therefore, this scientific evidence debunks the pretences of innocence of the accused.

17. The re-appraisal of the evidence done by us with the help of learned Counsel, leaves us in no doubt that the learned trial judge rightly held the

appellant guilty of the offence under section 302. The sentence imposed also does not call for any interference. Consequently, we dismiss the appeal and direct the appellant to surrender to his bail. The learned Additional Sessions Judge, Pune shall take steps to commit the appellant to prison to serve out his remaining sentence.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)